

JURISDICTION: OKLAHOMA TAX COMMISSION - DECISION
CITE: 2001-03-22-004 / NOT PRECEDENTIAL
ID: P0000225
DATE: 03-22-01
DISPOSITION: DENIED
TAX TYPE: MOTOR VEHICLE REGISTRATION
APPEAL: NO APPEAL TAKEN

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Neither PROTESTANT nor the Division have provided any evidence or stipulations in this case. PROTESTANT relates in his brief that he paid the annual registration fee for his motor vehicle on June 28. The fee was due by June 30. The fee was \$197.00 and a \$1.50 insurance fee. PROTESTANT states that his wife asked the motor license agent if there was a way to receive a refund if the vehicle was sold and was told by the agent that a refund was not available. PROTESTANT then called the Tax Commission on June 29 to ask if a refund could be obtained and was informed that a refund was not possible. On June 30, PROTESTANT sold his car and allowed his license tag to remain on the car. PROTESTANT arranged for an "independent contractor" to investigate the possibility of obtaining a refund of his registration fees. The independent contractor informed PROTESTANT that a refund was possible if PROTESTANT could produce a copy of the motor vehicle title and return the license plate. Since PROTESTANT had previously sold the car, he was not able to produce the title and license plate.

2. On July 26, 2000, PROTESTANT requested a refund of his annual motor vehicle registration fee of \$197.00 and his insurance fee of \$1.50. The Division denied his claim for refund by letter of September 12, 2000. PROTESTANT timely protested the Division's denial of his refund by letter of October 9, 2000.

ISSUE

PROTESTANT submits that he has shown the elements necessary to satisfy the essential elements of an equitable estoppel and for that reason he should obtain a refund of \$198.50.

CONCLUSIONS OF LAW

1. The Oklahoma Tax Commission has jurisdiction of this protest, 68 O.S. § 227.
2. In all administrative proceedings before the Tax Commission, the burden of proof shall be upon the Protestant to show in what respect the action or proposed action of the Tax Commission is incorrect, OAC 710:1-5-47, *Enterprise Management Consultants, v. Oklahoma Tax Commission*, 1988 OK 91, 768.1 P.2d 359. If the Protestant does not present sufficient evidence to prove facts which would entitle the Protestant to the requested relief, the protest must be denied, *Continental Oil Co. v. Oklahoma Tax Commission*, 1976 OK 23, 570 P.2d 315.

3. The standard burden or quantum of proof in administrative proceedings is "preponderance of the evidence," Oklahoma Tax Commission Order No. 91-10-17-061. The preponderance of the evidence means evidence sufficient to satisfy the trier of fact that the proposition on which the party has the burden of proof is more probably true than not true, *Peyton v. McCaslin*, 1966 OK 4, 417 P.2d 316.

The preponderance of the evidence is determined by the quality or believability of the evidence presented, not the quantity.

4. PROTESTANT has not presented any probative evidence to carry his burden of proof in this case and his protest must be denied for that reason. However, even if the facts he has alleged in his brief are taken as true, PROTESTANT has not presented a legal basis upon which relief can be granted. In this regard, PROTESTANT argues the theory of equitable estoppel provides a basis for relief because he obtained inaccurate information from the tag agent and the Division regarding the availability of a refund. When an "independent contractor" ascertained a refund method for PROTESTANT, he could not recover the license plate in order to return it for a refund because he had sold the car with the license plate. Notwithstanding the fact that PROTESTANT contracted to sell his motor vehicle to the buyer with a currently registered license plate and is not entitled to its return, the Division correctly points out in its brief that the Tax Commission is not responsible for the acts or omissions of a motor license agent, OAC 710:60-9-114, 47 O.S. § 1140(B). Further, it is a fundamental principle of law in Oklahoma that estoppel does not apply against the State acting in its sovereign capacity because of mistakes or errors of its employees, *Oklahoma Tax Commission v. Emery*, 1982 CIV APP 13, 645 P.2d 1048.

5. Finally, PROTESTANT has brought this protest requesting an equitable remedy because he failed to take advantage of a legal remedy available to him. It is well settled that a taxpayer may not maintain an action for equitable relief when a plain, speedy and adequate remedy at law was available to him, *Oklahoma Tax Commission v. Harris*, 1942 OK 157, 126 P.2d 685.

6. The protest of PROTESTANT to the Division's denial of his claim for refund should be denied.

DISPOSITION

It is the DETERMINATION of the OKLAHOMA TAX COMMISSION based upon the specific facts and circumstances of this case, that the vehicle registration fees protest of PROTESTANT be denied.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.